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BILL ANALYSIS



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House Bill 4433 (Substitute H-1)

Sponsor: Representative Ken Sikkema

House Committee: Conservation, Environment and Great Lakes

Senate Committee: Natural Resources and Environmental Affairs

Date Completed: 12-4-95

SUMMARY OF HOUSE BILL 4433 (Substitute H-1) as passed by the House:

The bill would create the "Property Rights Preservation Act" to establish a process for evaluating government actions that could result in constitutional takings. "Government action" would mean a decision on an application for a permit or license; required dedications or exactions of private property; proposed rules that, if promulgated or enforced, could limit the use of private property; and the enforcement of a statute or rule, including the issuance of an order. "Government action" would not include any formal exercise of the power of eminent domain; the discontinuance of government programs; or the forfeiture or seizure of private property by law enforcement agencies as evidence of a crime or for violations of law. "Constitutional taking" or "taking" would mean the taking of private property by government action such that compensation to the owner of that property was required by either the Fifth Amendment or 14th Amendment to the U.S. Constitution, or by Article I, Section 23 and Article X, Section 2 of the State Constitution of 1963. (The Fifth Amendment requires just compensation for private property taken for public use, and the 14th prohibits states from taking property without due process. Article 1, Section 23 specifies that the enumeration of rights in the Constitution is not to be construed to deny other rights. Article X, Section 2 prohibits property from being taken for public use without just compensation.)

The bill would require the Attorney General, with the Department of Natural Resources and the Department of Environmental Quality, to develop takings assessment guidelines under the Administrative Procedures Act that would help the Departments to identify and evaluate government actions that could result in a constitutional taking. The Attorney General and the Departments would have to base the guidelines on current law as articulated by the United States Supreme Court and the Michigan Supreme Court and would have to update the guidelines at least annually to account for changes in the law.

Prior to taking a government action, either Department, as appropriate, would have to review the takings assessment guidelines and consider the likelihood that the government action could result in a constitutional taking.

If there were an immediate threat to public health and safety that constituted an emergency and required an immediate response, the review of the takings assessment guidelines could be made when the response was completed.

Legislative Analyst: L. Burghardt

FISCAL IMPACT

The Department of the Attorney General reports that developing the guidelines could be handled with existing staff.

According to the Department of Environmental Quality, implementation of the assessment procedures in the bill would have a minimal fiscal impact on the Department.

Fiscal Analyst: B. Bowerman
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.